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Royal Bank of Scotland (“RBS”): Review of treatment of SME Customers by Global Restructuring Group (“GRG”)

This is my sixteenth quarterly report on my role in the RBS GRG complaints process.

Overall progress on RBS’s GRG complaints process

RBS (“the Bank”) has completed its assessment of all 2,693 complaints and any associated Direct Loss that it has received. The process has long been closed to new complaints.

Customer complaints typically consisted of multiple allegations. Across all complaints the Bank assessed 23,325 allegations. The Bank upheld 20% of all allegations raised, with 51% of Customers having one or more of their allegations upheld. The Bank’s uphold rate varied significantly by allegation theme, with complaints relating to Pricing having the highest uphold rate of 37%, whilst complaints relating to Valuations and Relationship Manager (“RM”) Behaviour had a much lower uphold rate of 9%. A detailed breakdown of the Bank’s complaint outcomes can be found in Table 2 below.

In respect of upheld allegations, the Bank made Direct Loss offers totalling £41.1m¹, plus £13.2m of interest². In addition, at the outset of this process the Bank automatically refunded a further £38.5m of complex fees (including equity participation agreement fees (“EPAs”) and property participation fee agreements (“PPFAs”)) to many of these 2,693 complainants on a no admission of liability basis³.

My team has now completed the small number of largely administrative assurance steps which remained at the time of my fifteenth quarterly report. As was the case at that time, I have no new assurance findings to report from their work. More detail on the substance of my assurance findings can be found in my twelfth report.

In the last quarter, I concluded my assessment of the appeals I received against the Bank’s complaint and Direct Loss outcomes. As the window for new complaints is now long closed, I

¹ This includes recategorisation of applicable automatic fee refunds of £17.7m

² The Bank offers 8% interest on all of its Direct Loss awards as I explain in more detail later in this report.

³ In addition, the Bank automatically refunded a further £57.6m of complex fees to 1,816 Customers who did not submit a complaint in this process.

do not expect to receive any further complaint and Direct Loss appeals. I refer to these appeals in this report as “Complaint Appeals”, to distinguish them from appeals against the Bank’s Consequential Loss (“CL”) outcomes (“Consequential Loss Appeals”). The Bank has now largely completed its assessment of claims for Consequential Loss stemming from upheld allegations and my consideration of Consequential Loss Appeals is expected to continue until well into 2021.

Complaint Appeals

I received 994⁴ Complaint Appeals. I sent letters communicating my decision to 972⁵ Customers - including 13 during this last quarter. 22 Complaint Appeals were closed without requiring a decision, of which seven concerned matters outside the scope of my role and 15 were withdrawn by the Customer. All Complaint Appeal outcomes have been communicated to customers.

My team had full access to the documentation stored on the Bank’s main document retention system⁶. This formed the primary evidence base against which I assessed complaints, alongside any evidence that a Customer chose to submit in their complaint or subsequent appeal. On every appeal I asked a legal expert and a banking expert⁷ to review the evidence afresh, placing no reliance on the Bank’s own summary of the relevant documentation. I also put in place a number of measures to ensure that my outcomes remained consistent across the large number of Complaint Appeals that I assessed.

As I have noted in previous quarterly reports, in considering each complaint appeal I was not pronouncing on the reasonableness of the Bank’s determination under its complaints process but conducting a fresh review of GRG’s conduct. Each appeal outcome therefore required detailed consideration of the allegation(s) and often relied on a matter of careful judgement as to what constituted a reasonable action on the part of GRG at the time. This meant that in assessing any particular action I may have reached different conclusions to those of the Bank. In a number of instances in which my conclusions differed from those of the Bank, my decisions rested on a finely balanced exercise of judgement.

For each complaint, when reviewing the evidence, I assessed the reasonableness of GRG’s actions with regard to good market practice at the time, the individual circumstances of the complainant, and any relevant contractual rights. I also considered the appropriateness of the process that GRG followed to execute that action, and the quality of GRG’s communications. It is therefore worth noting that, in some cases, my upholds reflected the fact that, while I considered the underlying action of GRG to have been reasonable, the process by which it executed or communicated that action was not. Further, in instances where the element of the Bank’s behaviour that I considered unreasonable was of much narrower scope than the allegation as articulated in the Bank’s formulation of the complaint, I made explicit the qualified basis of the uphold in the appeal conclusion. It should also be noted that when a Customer appealed an allegation that the Bank had already upheld, I limited my assessment to whether the Bank’s compensation offer was appropriate (and, accordingly, so as not to double count a complaint outcome, such allegations were only upheld on appeal when I considered the Bank’s offer to have been too low).

⁴ Total number of eligible appeals received by the ITP.

⁵ This differs from the Bank’s final published Appeal Outcome Letter count of 1009 due to a difference in how some connected entities were accounted for.

⁶ With the exception of legally privileged material and suspicious activity reports which I was unable to access. In those cases, I drew my conclusions based on the evidence available to me, making sure that no Customer was disadvantaged on the very small number of occasions where the Bank has asserted privilege.

⁷ Drawn from banks other than the RBS Group.

Once I reached a decision on a Complaint Appeal, I sent an outcome letter to the Customer. At the same time I provided a copy of the letter to the Bank. The Bank was obliged to accept my findings where they differed from its own. In my outcome letters I sought to explain my findings in sufficient detail so that both parties could understand the reasons for my conclusions.

Turning now to the 972 complaint appeal outcomes I issued to Customers, I fully or partially upheld 296 (30%).

Table 1. Summary of Complaint Appeals received

Eligible Complaint Appeals received	994
Decisions communicated to Customers	972
Complaint Appeals closed	22
Complaint Appeals fully or partially upheld ⁸	296 of 972 30%

Most Complaint Appeals comprised several allegations. Across the 972 appeal outcomes shared with Customers I assessed 6,532 allegations, of which 256 were assessed since my last quarterly report. Of the 6,532 allegation outcomes that I communicated, I upheld 465, representing an allegation uphold rate of 7%. The allegation uphold rate remained relatively constant over the last year. Table 2 below presents the data by allegation theme.

Table 2. Summary of allegation outcomes

Allegation themes	Bank Complaint outcomes ⁹			Appeal outcomes ¹⁰		
	Number of allegations	Number upheld	Uphold Rate	Number of allegations	Number Upheld	Uphold rate
Transfer In / Out of GRG	2,473	419	17%	758	29	4%
Pricing	7,935	2,911	37%	1,878	162	9%
Valuations	725	65	9%	267	17	6%
Unfair Treatment	6,562	805	12%	2,010	144	7%
Provision of Finance	4,562	446	10%	1,277	87	7%
RM Behaviour	998	94	9%	304	22	7%
West Register	70	8	11%	38	4	11%
Total	23,325	4,748	20%	6,532	465	7%

For any allegation that I upheld in the Complaint Appeals process, I assessed whether there was compensation due to the Customer for Direct Loss resulting from the Bank's unreasonable actions. Direct Loss is defined as either sums of money paid by a Customer to the Bank or a Customer's out-of-pocket costs of meeting the Bank's requirements.

Any Direct Loss that I awarded was in addition to awards for Direct Loss made by the Bank following its consideration of the complaint, and to any compensation it offered by way of discretionary goodwill payments. My award also reflected the fact that certain unreasonable fees

⁸ Uphold rate based on decisions communicated to Customers.

⁹ Allegations associated with the 2,693 complaint decisions that the Bank has communicated to Customers.

¹⁰ Allegations associated with the 972 complaint appeal outcomes that I communicated to Customers.

the Bank sought to charge were never actually levied by it and so, although wrong in principle, no financial redress for Direct Loss was due. I should also point out that, irrespective of whether an award of Direct Loss was made, an upheld complaint entitled a Customer subsequently to submit a claim for Consequential Loss, which is any financial loss stemming from that upheld complaint that has not already been awarded as Direct Loss.

In the 972 complaint appeal outcomes I have reached, the Bank had already made Direct Loss awards totalling £17.2m¹¹ (plus 8% interest amounting to £4.3m), as well as paying a further £10.0m in automatic complex fee refunds. I have upheld 465 allegations on appeal, awarding further financial redress for Direct Loss in 181 instances totalling £2.6m¹² (plus 8% interest amounting to £0.9m).

With the Complaint Appeals process now completed, I consider this to be an appropriate time to reflect in more detail on the allegation themes that I have seen.

Transfer into or out of GRG

About 10% of the allegations related to the transfer of a Customer into or (very occasionally) out of GRG. The Bank upheld 17% of these allegations and I upheld 4% on appeal. The most frequent allegation type within this theme was that the Customer was incorrectly placed into GRG (as opposed to complaints about the communication of the transfer, or a transfer back to mainstream banking). I upheld ten of the 468 allegations that the Customer was unreasonably transferred to GRG. In the majority of the cases which I upheld I found that, in the circumstances, the Customer's accounts would have been best managed within the mainstream division of the Bank and that the triggers that warranted a transfer of the Customer's accounts to GRG had not been met.

Overall, I consider that the Bank behaved appropriately in transferring a Customer's accounts to GRG. I found only one occasion where I considered the Bank's motive for transfer to be inappropriate. Based on my findings under this theme, it is fair to say that the vast majority of the Customers¹³ that appealed were already in financial difficulty prior to the transfer of their accounts to GRG and the nature of their financial difficulty justified the transfer.

I upheld 16 of the 203 allegations I assessed in relation to GRG's communication of the transfer of the Customer's accounts to GRG. These upholds typically related to failings by the Bank either to communicate in writing that the transfer had occurred or clearly to identify the reasons for the transfer. I also upheld a further three allegations in relation to an unreasonable delay in returning the management of the Customer's accounts to the mainstream division of the Bank.

I did not consider that any awards of Direct Loss were due under this theme as on no occasion did the transfer of a Customer's accounts to GRG in and of itself cause the Customer to incur any readily ascertainable financial loss.

Pricing

¹¹ This includes £9.9m of recategorised automatic fee refunds.

¹² This includes £1.1m of recategorised automatic fee refunds.

¹³ By "Customer" I mean the entity complaining, or in a small proportion of cases a connected entity appropriately treated by the Bank at the time as 'connected' to the complainant

Around 33% of the allegations in both the complaints and Complaint Appeals populations concerned pricing. The majority of these allegations related to the level of the margin or the arrangement fee charged by GRG, whilst only a small number related to more complex fees (such as EPAs or PPFAs¹⁴). The Bank upheld 37% of allegations in this allegation theme, while I upheld 9% on appeal. In many of my pricing upholds, I found that while it was reasonable in principle for GRG to have charged a fee or increased the margin, the fee or increased margin actually charged was higher than margins charged at the time by other banks for customers in similar circumstances (and sometimes poorly communicated).

The Bank upheld more than 50% of the allegations it received in relation to EPAs and PPFAs, and I upheld 16% of those I saw on appeal. While these fees often involved larger amounts, the allegations I upheld did not usually lead to an additional compensation payment because most of these fees were automatically refunded by the Bank in 2017. An uphold in these cases was still significant, as it reflected the fact that the Bank's pricing approach was unreasonable, and made the complaint one on which a claim for Consequential Loss could be based – something that does not flow simply from the Bank's automatic refund of complex fees.

The majority of the Direct Loss that I awarded across all allegation themes was related to upholds in the pricing theme (£2.2m of the £2.6m awarded). This reflects that upholds in this theme were more likely to have led to demonstrable financial loss than in some other themes. Where I found the charging of a margin or fee to have been unreasonable because the margin or fee was unduly high, the Direct Loss I awarded typically equated to the difference between the margin or fee charged and the margin or fee that I considered it would have been reasonable for the Bank to charge considering market practice at the time. Where I found the charging of a fee itself to have been unreasonable, the Direct Loss I awarded would typically comprise the entire fee.

Valuations

Approximately 3% of the allegations received by the Bank concerned valuations. The Bank upheld 9% of these, and upon appeal I upheld 6%.

Of my 17 upholds under this theme, nine related to failures of process or poor communication of the fees charged to conduct a valuation rather than any unreasonableness of the valuation itself. For example, in three of these nine, I considered that the Bank failed to communicate that a valuation fee charged would be higher than that quoted to the customer.

Of my other eight upholds, in three cases, I found that although the requirement for a valuation was not of itself unreasonable, the valuation was based on an inappropriate methodology or insufficient rationale. In five cases I found that the Bank had unreasonably required a valuation.

Separately, I also upheld a small number of allegations under the pricing or provision of finance themes where I considered that the Bank used an inappropriate valuation methodology (typically where it used an internal valuation when – in my view – the importance of the associated action would have merited an independent valuation).

¹⁴ By "EPA" I mean Equity Participation Agreement. By "PPFA" I mean Property Participation Fee Agreement. Both of these mechanisms were employed by the Bank to compensate it for elevated lending risk by sharing the upside of potential appreciation in the value of Customers' assets.

I awarded a small amount of Direct Loss under this theme (<£0.1m). Where I found the requirement to obtain a valuation itself to have been unreasonable, the Direct Loss I awarded comprised the entire valuation fee. However, where I found that it was reasonable to obtain a valuation but that the valuation fee charged was higher than that quoted to the customer, the Direct Loss I awarded typically equated to the difference between the fee charged and the fee that I considered it would have been reasonable for the Bank to charge, taking into account the Customer's circumstances and any prior communications between the Bank, and / or the valuer, and the Customer.

Unfair treatment

Approximately 33% of the allegations received related to unfair treatment. This was a broad category of complaint, which included allegations such as GRG unfairly introducing third parties or imposing new management, and GRG forcing the sale of a Customer's asset(s). The Bank upheld 12% of unfair treatment allegations, and I upheld 7% of the allegations I saw under this theme on appeal.

The most common allegation type that I upheld within this theme related to GRG's use of third parties, often to complete a security review or an independent business review. The Bank upheld approximately 22% of the allegations it received in relation to GRG's use of third parties, and I upheld 12% of these allegations on appeal. Some of these upholds related to GRG unnecessarily engaging a third party at the Customer's cost. However, a significant number related to cases where GRG reasonably required the engagement of a third party, but did not follow an appropriate process to appoint them (for example, it communicated poorly or it did not offer the Customer an appropriate choice of provider).

Another common allegation type that I assessed under this theme was that GRG forced the sale of a Customer's assets. Of the 339 allegations that I assessed of this nature, I upheld seven. Again, in almost all of these cases I found that GRG's unreasonable action was related to the process it followed as part of the sales process, albeit that the request for the asset to be sold was itself not unreasonable. On two occasions I found that GRG applied unreasonable pressure on the Customer to sell their asset(s).

Approximately 8% of the Direct Loss that I awarded across all allegation themes was related to upholds under this theme (£0.2m of the £2.6m awarded). The majority of this related to fees charged by a third party that I found to be unreasonable because the fees charged were unreasonably high, or because the fees were more than what were initially quoted to the Customer, or because it was unreasonable of the Bank to require that the Customer engage a third party. Where I found the charging of the fee to have been unreasonable because the fee was unduly high, the Direct Loss I awarded typically equated to the difference between the fee charged and the fee that I considered it would have been reasonable for the Bank to charge, taking into account the Customer's circumstances and any prior communications between the Bank, and / or the third party, and the Customer. Where I found the requirement to engage a third party itself to be unreasonable, the Direct Loss I awarded would typically comprise the entire fee.

Provision of finance

Approximately 20% of the allegations related to GRG's provision of finance. This theme mainly comprised complaints about GRG's demands for repayment and GRG's restructuring proposals. The Bank upheld 10% of these complaints, and I upheld 7% of those which I saw on appeal.

The most common type of allegation I saw within this theme related to GRG's repayment demands (which included formal demands or requests for the repayment of facilities, or reductions in a Customer's overdraft limit). The Bank upheld 7% of the allegations it received in relation to this allegation type, and I also upheld 7% of those I considered on appeal. In the majority of these upholds, I concluded that while the Bank was contractually entitled to demand repayment (or reduce an overdraft limit), it did not follow an appropriate process in doing so. For example, it did not give enough notice or offer the Customer enough time to find alternative financing arrangements.

Another common type of allegation received relating to this theme concerned unsatisfactory restructuring proposals. The Bank upheld 12% of these allegations, and I upheld 11% on appeal. The most common reasons for upholding these allegations were that I considered that one or more terms within the proposal were sufficiently unreasonable as to render the overall proposal unreasonable, or that the Bank failed to provide restructuring proposals when it should reasonably have been expected to do so, or because the Bank provided a Customer with inadequate time to consider a proposal. A small number of allegations were also upheld because the Bank failed to give due consideration to a Customer's proposal.

Approximately 7% of the Direct Loss that I awarded across all allegation themes was related to upheld complaints under this theme (£0.2m of the £2.6m awarded). There were only eight other instances where I awarded Direct Loss under this theme, as Customers rarely incurred any direct out-of-pocket costs as a result of the Bank's unreasonable actions in relation to restructuring proposals or repayment demands.

RM behaviour

Approximately 5% of allegations received related to RM behaviour. The Bank upheld 9% of RM behaviour allegations, and on appeal I upheld 7% of those I was asked to consider. In many ways this was the most challenging type of allegation to investigate. There are two main reasons for this. First, in most cases the allegation was unspecific as to date and occasion. Since many Customer accounts were in GRG for extended periods, I needed to review the whole course of the relationship to see whether there was any basis for upholding the complaint. Second, because most of the allegations related to spoken exchanges that were not recorded, I had to examine the written evidence (both that contemporaneous to the events in question, such as internal and external Bank correspondence or meeting minutes, as well as any supplied with the complaint or appeal) to see if it was more likely than not that the alleged conduct occurred.

In 22 cases I saw sufficient evidence to conclude that a member of GRG staff acted inappropriately. Most of these concerned unprofessional communications in written correspondence with the Customer. On a small number of occasions I also saw inappropriate comments or language used in internal emails. However, there were no instances where I considered that this poor behaviour caused the Customer to incur any Direct Loss. When I found evidence of inappropriate behaviour by a GRG employee I also reported the underlying evidence to the Bank so that it could conduct its own internal HR investigation into that individual should they still be employed by the Bank.

West Register

Finally, there were relatively few allegations relating to the actions of West Register – either to the Bank at first instance or to me on appeal. Given the publicity that West Register's

relationship with GRG attracted – and the suggestion that the Bank took advantage of this relationship to the detriment of Customers – I was very alert to those Complaint Appeals that involved West Register. The Bank received 70 such allegations, of which it upheld eight (or 11%). 38 of the allegations were appealed and I upheld four (11%). In one of these upholds I considered that the Bank was unduly focused on a sale of the customer’s assets to West Register. In the other three, I concluded that confidential information had been inappropriately shared between West Register and GRG, but that this did not result in any financial detriment to the Customer.

Consequential Loss appeals

Customers who have had any part of their complaint upheld by the Bank in the first instance, or by me on appeal of their complaint outcome, are eligible to submit a claim for Consequential Loss. My main role in regard to these CL claims is to hear Customer appeals.

It is worth noting that on every award of Direct Loss (made either by the Bank, or by me on appeal) the Bank automatically adds 8% simple interest. This is intended to compensate the Customer for being deprived of the use of the amount they are awarded in Direct Loss. In total, the Bank offered £13.2m in 8% interest on its own Direct Loss awards. In addition (as noted above), the Bank has offered a further £0.9m in 8% interest on Direct Loss awards I have made on appeal. The Consequential Loss process exists for Customers who feel that their losses stemming from the unfair actions of GRG exceed the amount for which they were compensated through their Direct Loss award plus 8% interest.

In the CL process it is for the Customer to identify what (further) loss was caused by the unfair action of the Bank and to provide the evidence needed to support their claim. The Bank’s role is then to assess the Customer’s claim on the basis of the arguments and evidence presented by the Customer. In making a CL appeal, it is for the Customer to identify the particular item(s) of their claim that they are appealing, explain why the conclusion reached by the Bank on that item is incorrect, and (where appropriate) cite relevant evidence in support of their position. My task is to then reach a decision on the merits of their challenge to the Bank’s outcome. In making a CL assessment two key tests must be met: (i) the Customer must show that it is more likely than not that the loss was *caused*, either directly or indirectly, by the Bank’s unfair action (as determined in the outcome to an eligible complaint or on appeal)¹⁵; and (ii) the Customer must show that the *quantum* (or amount) of loss claimed was the loss actually incurred by the Customer.

Customers do not always base their CL claim on an eligible upheld complaint. In an effort to assist Customers, especially those who have not sought professional advice, the Bank has, where possible, reformulated their claim, often involving detailing the sequence of events that would have taken place had the Bank’s unreasonable actions not taken place. This willingness to assist is welcome. For the same reason I see my role as including an initial check on whether the Bank’s reformulation of the claim and (in all cases) its assessment of the claim are, on the facts, logical and not obviously wrong. Having so satisfied myself, I then go on to apply the assessment criteria outlined above to the Customer’s appeal.

¹⁵ As part of establishing *causation*, it must also be determined whether a loss was reasonably foreseeable at the time of the unfair action (i.e. the loss must not be too *remote*) and whether the loss, in whole or in part, could have reasonably been *mitigated* by the Customer. However, the questions of *remoteness* and *mitigation* are not critical to most assessments, and hence for simplicity in this report I refer to them as part of *causation*.

As of the end of this last quarter, 279 Customers had submitted CL claims to the Bank. The Bank has communicated its outcome to over 90% of these Customers, awarding a total of £3.1m in Consequential Loss^{16 17}.

In total, I have now received 102 CL appeals, of which 20 were received in the last quarter. I have already communicated my decision in letters to 53 of these Customers.

Most CL appeals contain claims for multiple heads of loss. Across the 53 CL appeal outcome letters that I sent the Customers had appealed 152 heads of loss. There is no exhaustive list of the types of loss that can be claimed as CL. However, examples of heads of loss that have recently been appealed include losses which the Customers assert resulted from: the forced disposal of an asset; the professional fees incurred in meeting the Bank's requirements; the cost of wasted management time; having had to forgo a business opportunity; and the increased cost of borrowing from the need to make new banking arrangements.

Of the 53 total CL appeal outcomes I have issued to Customers, I have partially upheld 8 (15%). Out of the 152 heads of loss appealed I have upheld 11 (7%). On each occasion after careful consideration, I concluded that, on the balance of probabilities, the Bank's unfair actions had *caused* (either directly or indirectly) at least some of the loss claimed.

In the last quarter I partially upheld four appeals on causation, comprising a total of five heads of loss. Three of the upheld heads of loss related to legal and professional costs incurred by the Customer in making a successful CL claim. In all three instances I also upheld a separate element of the appeal (including both causation and quantum appeals), and therefore considered that an award for the corresponding legal and professional fees incurred in bringing the CL appeal was due.

I have passed these claims back to the Bank for it to assess, in the first instance, the quantum of compensation due (if any).

In the last quarter I also partially upheld three appeals from customers who appealed the quantum of compensation awarded by the Bank. In these upheld quantum appeals I awarded an extra £8,739 in Consequential Loss. Two of the four upheld quantum appeals related to awards for legal and professional fees incurred in making a successful complaint or CL claim. In these instances I considered that the customer was due compensation for an amount of fees greater than that which the Bank had initially awarded.

I hope this report is helpful in setting out the key activities of the last quarter, and the overall progress made to date.

Sir William Blackburne
Independent Third Party

¹⁶ This excludes the 8% interest already made on these Customer's Direct Loss awards, and excludes Claim Preparation Fees.

¹⁷ Accurate as of 18 Dec 2020